Filed 10/3/01

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MICHAEL CORCORAN, Plaintiff and Appellant, v. CITY OF HUNTINGTON BEACH et al., Defendants and Respondents.	D037541 (Super. Ct. No. 793014)

APPEAL from a judgment of the Superior Court of Orange County, William F. McDonald, Judge. Affirmed.

In this action arising out of plaintiff and appellant Michael Corcoran's (Corcoran) demotion from probationary sergeant back to his former position of senior police officer at the Huntington Beach Police Department, Corcoran filed a petition for peremptory writ of mandate (writ) in the superior court against defendants and respondents City of Huntington Beach, Huntington Beach Police Department, Ronald Lowenberg and William Osness (collectively, the City) seeking to compel the City to provide him with a

full evidentiary hearing in his challenge to that demotion. The court granted the City's motion for summary judgment, finding that Corcoran was not entitled to a full evidentiary hearing because of his probationary status at the time of his demotion.

Corcoran appeals, contending that the court erred in granting summary judgment as (1) an evidentiary hearing was required because his demotion was considered "punitive" in nature; (2) City of Huntington Beach personnel rules (Personnel Rules) mandate an evidentiary hearing; (3) the City bore the burden of demonstrating that there was "just cause" to demote Corcoran; and (4) a triable issue of fact existed as to whether Corcoran was demoted. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Corcoran's Employment with the City*

Corcoran was hired as a police officer with the Huntington Beach Police Department (police department) in October 1977. In February 1995, when Corcoran held the position of senior police officer, he was promoted to sergeant and began a one-year probationary period pursuant to the police department's Manual of Rules and Regulations (Rules and Regulations).[1]

In January 1996, Corcoran was provided notice that he was being released from his position as probationary sergeant and reassigned back to his former position of senior

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1 Section 2-3027.00(A) of the Rules and Regulations provides, in part: "Sworn Police, Communications Operator and Detention Officer positions shall have a probationary period of one (1) year from the date of appointment or *promotion*." (Italics added.)

police officer. Corcoran was demoted for failing to meet accepted standards of performance for a sergeant.

In March 1996, Corcoran filed an appeal contesting his reassignment to senior police officer. The City refused Corcoran's request for an appeal on the ground that it was untimely made.

In December 1996, Corcoran filed a petition for writ of mandate in the superior court, requesting the court to order the City to "provide the petitioner with an administrative appeal as mandated by Government Code section 3304(b) . . . ." In February 1997, the City agreed to give Corcoran an administrative appeal hearing and Corcoran dismissed his petition for writ of mandate. The parties selected a hearing officer and scheduled a hearing for December 1997.

However, a dispute thereafter arose between Corcoran and the City as to the type of hearing to which Corcoran was entitled to contest his demotion. The City contended that Corcoran was entitled only to a "limited, name-clearing" hearing that would only be "advisory." Corcoran, on the other hand, contended that he was entitled to an administrative appeal and a full evidentiary hearing under the Personnel Rules. Because of the parties' dispute as to the type of hearing to which Corcoran was entitled, the hearing officer canceled the December hearing.

B. *The Instant Action*

In April 1998, Corcoran filed the instant writ, challenging the City's failure to provide him with a full evidentiary hearing in his challenge to his demotion. In September 1998, the City filed a motion for summary judgment, contending that

Corcoran, as a probationary sergeant, was entitled to no hearing or, at most, was only entitled to a "name-clearing" hearing to make a formal record of his position regarding his demotion. Corcoran opposed the motion, asserting that he was not a probationary employee and therefore was entitled to a full administrative appeal and evidentiary hearing to contest his demotion. In October 1998, the court granted the City's motion, finding that since Corcoran was a probationary sergeant at the time of his demotion, he was at most entitled to only a "name-clearing" hearing, not a full evidentiary hearing as requested by Corcoran.

This timely appeal follows.

DISCUSSION

I. *Standard Applicable to Summary Judgment Motions*

In evaluating the propriety of a grant of summary judgment our review is de novo, and we independently review the record before the trial court. (*Branco v. Kearny Moto Park, Inc.* (1995) 37 Cal.App.4th 184, 189 (*Branco*).) In practical effect, we assume the role of a trial court and apply the same rules and standards that govern a trial court's determination of a motion for summary judgment. (*Lopez v. University Partners* (1997) 54 Cal.App.4th 1117, 1121-1122.)

Under Code of Civil Procedure section 437c, subdivision (c), a motion for summary judgment shall be granted if all the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. Because the granting of a summary judgment motion involves pure questions of law, we are required to reassess the legal significance and effect of the papers presented

by the parties in connection with the motion. (*Ranchwood Communities Limited Partnership v. Jim Beat Construction Co.* (1996) 49 Cal.App.4th 1397, 1408.) We strictly construe the evidence of the moving party and liberally construe that of the opponent, "and any doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion." (*Branco, supra*, 37 Cal.App.4th at p. 189.)

II. *Analysis*

A. *Employment Rights of Public Sector Employees*

Once a public employee[2] passes his or her probationary period, and obtains permanent status, he or she possesses a "property interest" in his or her continued employment that is safeguarded by due process. (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 206.) A permanent public employee who has been subjected to termination, demotion or discipline is therefore entitled to an administrative hearing to contest the adverse action, at which the employer carries the burden of proof to justify its actions. (*Id.* at p. 215.)

By contrast, a probationary public employee does not possess a protected property interest in his or her job and can be terminated, demoted or disciplined without a hearing and without good cause. (*Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340, 345 (*Lubey*).) However, where the adverse employment action stigmatizes the employee's reputation, impairs the employee's opportunity to earn a living, or damages the employee's reputation in the community, the due process clause of

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2 One employed by a state or local agency.

the 14th Amendment to the California Constitution guarantees even probationary employees a limited "name-clearing" hearing. (*Lubey*, *supra*, at p. 346; *Zeron v. City of Los Angeles* (1998) 67 Cal.App.4th 639, 642.) This "liberty interest" hearing, at which the employee bears the burden of proof, is limited to providing the employee the opportunity of establishing a record of the circumstances surrounding the adverse action. The employer, at its discretion, may reverse its decision or ignore the findings at that hearing and maintain its original decision. (*Riveros v. City of Los Angeles* (1996) 41 Cal.App.4th 1342, 1361.)

B. *Employment Rights of Police Officers*

The discipline and discharge of police officers is governed by the Public Safety Officers Procedural Bill of Rights Act, Government Code[3] section 3300 et seq. This act is applicable to all police officers throughout the state, and is designed to promote stable employment relationships and effective law enforcement services. (§ 3301.)[4]

As amended in 1998, section 3304, subdivision (b) (section 3304(b)), affords police officers who have completed their probationary status certain appeal rights to challenge "punitive actions" taken against them:

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3 All further statutory references are to the Government Code.

4 Section 3301 provides in part: "[E]ffective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of this state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California."

> "No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer *who has successfully completed the probationary period that may be required by his or her employing agency* without providing the public safety officer with an opportunity for administrative appeal." (Italics added.)

"Punitive action" is defined in section 3303 as:

> "[A]ny action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."

The 1998 amendment to section 3304(b) sought to "clarify that protections provided officers regarding punitive actions are limited to officers who have passed their probationary employment periods." (Assem. Com. on Appropriations, Analysis of Sen. Bill No. 2215 (1997-1998 Reg. Sess.) as amended Aug. 12, 1998.)

However, section 3304(b) only mandates the same type of "name-clearing" hearing guaranteed by the 14th amendment under the common law, discussed *ante*. (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806, cert. den. (1994) 510 U.S. 1194; *Runyan v. Ellis* (1995) 40 Cal.App.4th 961, 967.) The details of what type of administrative hearing is allowed under section 3304(b) are left to the "rules and procedures adopted by the local public agency." (§ 3304.5.)

C. *Personnel Rules*

Personnel Rules, rule 4-29[5] defines a "permanent employee" as:

> "An employee who has successfully completed a probationary period in a permanent position."

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5 All further rule references are to the Personnel Rules.

Rule 4-37 defines a "probationary employee" as:

> "An employee holding a probationary appointment to a permanent position."

Rules and Regulations section 2-3027.00, provides that police officers promoted to a new position are considered probationary employees as to that position for a period of one year:

> "OBJECT OF THE PROBATIONARY PERIOD
>
> "The probationary period shall be regarded as part of the testing process and shall be utilized for closely observing the employees' work, or for reviewing any probationary employee whose performance does not meet the required standards of the job to which he/she was appointed *or promoted*.
>
> "A. Requirement Length
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> "An appointment from an employment list *or promotional list* is not permanent until satisfactory completion of a probationary period. Sworn Police . . . shall have a probationary period of one (1) year from the date of appointment *or promotion*." (Italics added.)

Rule 9-4 provides that employees who fail to pass a probationary period have no right to appeal that decision:

> "REJECTION OF PROBATIONARY EMPLOYEE. During the probationary period, or any extension thereof, an employee may be rejected at any time by the department head without cause and without the right of appeal."

The parties are in agreement that where there is a right to a hearing under the Personnel Rules to contest a suspension, demotion, or termination, they provide for a full evidentiary hearing.

D. *Analysis*

The issue presented by Corcoran's appeal is essentially this: Does a permanent status senior police officer who has been promoted to probationary sergeant have a right to a full evidentiary hearing to challenge a demotion back to senior police officer that occurs during the probationary period. Applicable authority, Personnel Rules and Rules and Regulations dictate that such an employee is not entitled to an evidentiary hearing. Accordingly, Corcoran's petition, seeking to compel the City to provide him with a full evidentiary hearing to challenge his promotion is without merit, and the court properly granted summary judgment in the City's favor.

Corcoran contends that he is entitled to a full evidentiary hearing as he is not a probationary employee, but rather a permanent status employee that has been employed by the City as a police officer since 1977. However, this ignores the fact that under the Rules and Regulations, an employee promoted to a new position is considered a probationary employee *as to that new position.* (Rules and Regulations, § 2-3207.00.) Further, under the Personnel Rules, as a probationary sergeant, any adverse employment action to which Corcoran was subjected during the probationary period *as to that position* could not be challenged by way of appeal. (Rule 9-4.) There is no contention that there was any adverse employment action as to Corcoran's permanent position as a senior police officer, only as to his probationary position. Accordingly, Corcoran was considered a probationary employee as to the adverse employment action related to his promotion to sergeant, and he is only entitled to the same rights as other probationary employees. It is clear under the Personnel Rules and Rules and Regulations a

probationary employee is not entitled to an evidentiary hearing to contest an adverse employment action.

This conclusion is in no way inconsistent with Corcoran's status as a permanent senior police officer, employed by the police department since 1977. The police department has adopted regulations for its police officers that specify that not only initial hires, but also promotions are subject to a probationary period. If we were to accept Corcoran's argument that he cannot be considered a probationary employee as to his promotion because he is a permanent employee as to his former position, this would render the probationary period for promotions meaningless and give promoted employees the same rights during their probationary period as those who have passed probation. (*Kestler v. City of Los Angeles* (1978) 81 Cal.App.3d 62, 64-65.) Such an interpretation cannot be upheld: "It is of the essence of a probationary employment that the employee is on trial for the probationary period . . . . The [City of Huntington Beach has] . . . left to the chief of police the right and power to weigh not only proven acts of misconduct but more subtle matters of character and judgment, and to act on his expertise in deciding whether the probationer should attain the secure status of permanent employee." (*Id.* at p. 65.)

Corcoran relies upon section 3304(b) to support his position that he is entitled to a full evidentiary hearing, asserting that his demotion was considered "punitive" under the definition in section 3303. It is clear that Corcoran's demotion is the type of punitive action to which a section 3304(b) appeal applies. (See § 3303.) However, Corcoran ignores the fact that section 3304(b) was amended in 1998 to clarify that its terms apply

only to employees who have "successfully completed the probationary period that may be required by his or her employing agency." As we have concluded, *ante,* that the Rules and Regulations require a probationary period not only for initial hires, but also for police officers promoted to a new position, Corcoran has no right to an administrative appeal under section 3304(b) to challenge his demotion during his probationary period.[6]

The common-law "name-clearing" hearing that provides minimal due process protections for even probationary employees subjected to certain adverse employment decisions also does not save Corcoran's action. First, it is doubtful that such a hearing is even available to Corcoran as a demotion for reasons other than misconduct is generally not considered a type of adverse employment action that stigmatizes the employee's reputation, impairs the employee's ability to earn a living or damages the employee's standing in the community. (*Lubey, supra,* 98 Cal.App.3d at p. 346.) However, we need not reach this issue. It is undisputed that the City, whether or not they were required to do so, *did* offer to provide Corcoran a limited "name clearing" hearing, which Corcoran refused.

Corcoran raises two additional contentions that must be rejected. First, Corcoran contends that the City could only support its demotion of Corcoran with a showing of "just cause." However, this argument assumes that Corcoran was not considered a

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[6] Corcoran does not contend that the 1998 amendment to section 3304(b), which became effective in January 1999, should not be applied retroactively to his January 1996 demotion. At any rate, such an argument would be unavailing as the 1998 amendment was only a clarification of existing law. (See Assem. Com. on Appropriations, Analysis of Sen. Bill No. 2215 (1997-1998 Reg. Sess.) as amended Aug. 12, 1998.)

probationary employee as to his position as sergeant. Probationary employees may be demoted or terminated without any cause whatsoever. (Rule 9-4; *Lubey*, *supra*, 98 Cal.App.3d at pp. 345-346.)

Corcoran also contends that a triable issue of fact exists as to whether he was demoted from his position as sergeant. Corcoran contends that the City has maintained that he was not demoted but merely "reassigned," and therefore not entitled to an administrative appeal under section 3304(b). However, this contention is irrelevant, given our holding in this case that probationary employees such as Corcoran, whether "demoted" or "reassigned," are not entitled to an appeal hearing under section 3304(b).

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

NARES, J.

WE CONCUR:

KREMER, P. J.

McDONALD, J.